

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RAJWINDER S. WALIA

Claimant

VS.

**RAJWINDER SINGH WALIA TRUCKING
and/or TRIMODAL, INC., and/or APTDA**

Respondents

AND

**PACIFIC EMPLOYERS INSURANCE COMPANY
and/or FIRE AND CASUALTY INSURANCE
COMPANY OF CONNECTICUT and/or
administrator WARD NORTH AMERICA, INC.**

Insurance Carriers

Docket No. 1,006,825

ORDER

Claimant and Respondent, Trimodal, Inc. (Trimodal), and its insurance carrier, Pacific Employers Insurance Company (Pacific), appeal the November 5, 2008, Review & Modification Award On Remand of Administrative Law Judge Kenneth J. Hursh (ALJ). Claimant was denied benefits against respondent, Rajwinder Singh Walia Trucking (Walia Trucking), and its insurance carrier, Fire and Casualty Insurance Company of Connecticut (Fire and Casualty), and/or its administrator, Ward North America, Inc. (Ward North), after the ALJ determined that no application for hearing had been filed with the Kansas Division of Workers Compensation (Division), alleging a claim against Walia Trucking as the real party in interest. The ALJ also held that the procedure of "review and modification" of an award requires an award already exist. The ALJ determined that, as there had never been an award of benefits for claimant against Walia Trucking, there was nothing to review and modify.

Respondent, Trimodal, appealed the Review & Modification Award On Remand after the ALJ ordered respondent, Trimodal, and its insurance carrier, Pacific, to pay claimant's attorney a fee of \$3,456.25. Trimodal argues, as it had already been determined that claimant was never an employee of Trimodal, an award of attorney fees against Trimodal was error.

Claimant appeared by his attorney, Frank D. Taff of Topeka, Kansas. Respondent, Walia Trucking, and its insurance carrier, Fire and Casualty, and its administrator, Ward North (this insurance coverage was obtained through the Association of Professional Truck Drivers of America (APTDA), a truck drivers' association), appeared by their attorney, Clifford K. Stubbs of Roeland Park, Kansas. Respondent, Trimodal, and its insurance carrier, Pacific, appeared by their attorney, Wade A. Dorothy of Overland Park, Kansas.

The Appeals Board (Board) has considered the record and adopts the stipulations contained in the Review & Modification Award; the Review & Modification Award On Remand; and the Transcript of Remand Hearing, with exhibits. The Board heard oral argument on February 3, 2009. Board Member Julie Sample has recused herself from this matter. E. L. Lee Kinch was appointed as Board Member Pro Tem to serve in her place.

ISSUES

Claimant raises the following issues from the Review & Modification Award On Remand:

1. "The ALJ erred in finding that the Agreed Award of January 21, 2003, cannot be modified to award the claimant benefits against Walia Trucking.
2. "The ALJ erred in finding that, 'Walia Trucking was never notified that proceedings for compensation were sought against it.'
3. "The ALJ erred in finding that, 'there has never been an award, agreed or otherwise.'
4. "The ALJ erred in finding that, '[after July 12, 2007] the claimant attorney pursued evidence that was not relevant to review and modification.'
5. "The ALJ erred in awarding less in attorney fees and expenses than the undisputed expert testimony demonstrated is reasonable.
6. "The ALJ erred in awarding attorney's fees based on an hourly rate less than what the undisputed expert testimony demonstrated is reasonable and customary in the locale.
7. "The ALJ erred in failing to award additional attorney's fees and travel expenses for the appearance of this counsel at the October 30, 2008, Review and Modification hearing,¹ as was demonstrated by undisputed expert testimony to be reasonable.

¹ It should be clarified that it was the Remand Hearing that was held on October 30, 2008, and the Review and Modification Hearing was held on July 12, 2007.

8. "The ALJ erred in refusing to allow claimant additional medical treatment in light of the undisputed testimony of Dr. Gosalia that such is medically necessary."²

Respondent, Trimodal, and its insurance carrier, Pacific, request review of the following issues from the Review & Modification Award On Remand:

1. Whether the ALJ erred in awarding attorney fees to be paid by respondent, Trimodal, and its insurance carrier, Pacific.
2. Whether the ALJ erred in assessing costs in the amount of \$669.30 against respondent, Trimodal, and its insurance carrier, Pacific.

In essence, claimant disputes the ALJ's refusal to award benefits against alleged respondent, Walia Trucking, APTDA, Fire and Casualty and/or Ward North. Respondent, Trimodal, disputes an award of attorney fees against it. Claimant argues he is entitled to attorney fees against some entity, whether it be Trimodal or some other party.

FINDINGS OF FACT

This was a routine workers compensation injury made incredibly complicated by the actions of more than one party and more than one attorney. A detailed chronology of most of the events in this matter is contained in the August 7, 2006 Final Order of the Kansas Department Of Labor (KDOL), in Case No. FA 03-0042-27, In the Matter of Rajwinder Singh Walia.³ A full recitation of those events is not necessary in this Order. Only the matters germane to this Order will be discussed herein.

Claimant was a self-employed truck driver, doing business as Walia Trucking and driving for Trimodal. The KDOL Final Order states claimant had leased his truck to Trimodal.⁴ On December 11, 2000, claimant was involved in a motor vehicle accident when he wrecked his truck. Claimant suffered serious injuries and was transported to the Newton Medical Center emergency room and then transferred to Via Christi Regional Medical Center in Wichita, Kansas. As a result of claimant's agreement with Trimodal, claimant as Walia Trucking had earlier obtained workers compensation insurance through APTDA. This insurance, procured through Fire and Casualty and administered by Ward North, began paying workers compensation benefits to claimant, including both medical treatment and temporary disability benefits. Claimant was diagnosed with a compression

² Claimant's Notice of Appeal at 1-2.

³ Review & Modification Hearing (July 12, 2007), Cl. Ex. 1.

⁴ *Id.* at 35.

fracture at L4. He was determined to be unable to work by his primary physician, Anil Gosalia, M.D. Claimant was later referred to several other health care professionals for treatment. At some point, it was determined that claimant was receiving workers compensation temporary total disability benefits while at the same time working at a business, Mr. Goodcents, of which he soon became a part owner.

On May 24, 2002, a discovery deposition taken of claimant was conducted by Attorney Stubbs as the attorney for respondent and its insurance company, with APTDA listed as the respondent and Ward North as the insurance company. The deposition was held at the law offices of claimant's then attorneys, Schmid & Roswold, P.C. Claimant's attorney, Mark R. Schmid, was present. There is no indication in this record that James M. Roswold was ever authorized by claimant to act as attorney for claimant or to assist in the representation of claimant in this matter. However, Mr. Roswold, in an Agreed Award prepared by Attorney Stubbs and in a Dismissal of Claim, lists #16468 as his Kansas Supreme Court bar number. Mr. Schmid lists no Kansas Supreme Court bar number on any document in this record.

On October 14, 2002, Attorney Stubbs signed and filed an Application for Hearing (E-1) with the Division. The Application lists Trimodal as the respondent and Ward North as the insurance company and was assigned Docket No. 1,006,825. But, as later established, Trimodal was not the employer and Ward North was a third party administrator, not an insurance company. Claimant did not sign the E-1. Attorney Stubbs mistakenly identified himself as the attorney for the applicant, Trimodal.

On November 26, 2002, a "Dismissal of Claim" without prejudice was signed by claimant, with his signature being notarized. The attorney signature is illegible, but the names of both Attorney Roswold and Attorney Schmid are listed below the signature with Attorney Roswold's Kansas Supreme Court bar number. The name listed below the Certificate of Service lists Attorney Schmid's name only and bears the same illegible signature as described above. There is no other signature contained on this Dismissal of Claim.

On December 23, 2002, a letter from Attorney Stubbs to Attorney Schmid stated that the Dismissal of Claim was ineffective in Kansas and, therefore, an Agreed Award had been prepared for Attorney Schmid to review, sign and return. This Agreed Award was signed by Attorney Stubbs and contained the same illegible signature above the names of Attorney's Roswold and Schmid, as was on the Dismissal of Claim. The Agreed Award was also signed by ALJ Julie Sample, but was not signed by claimant. This Agreed Award lists Trimodal as the respondent and Ward North as the insurance company. It also states claimant was injured on December 11, 2000, and that the relationship of employer and employee existed on the date of accident. The Agreed Award goes on to list the amount of temporary total disability compensation (TTD) and medical benefits paid in this matter and states that "claimant acknowledges that he was not entitled to the benefits paid to him pursuant to his alleged injury." It further states that the parties acknowledge and

stipulate that claimant is not entitled to any additional benefits pursuant to this claim. Purportedly, respondent Trimodal and its insurance carrier Ward North agreed, in the Agreed Award, to not seek direct reimbursement from claimant for the benefits paid. The Agreed Award indicates claimant was present, but there is no indication in this record that claimant actually participated in any such hearing.

Attorney Stubbs used the Agreed Award to obtain reimbursement from the Kansas Workers Compensation Fund (Fund) for the moneys expended for claimant's TTD and medical benefits. These funds included \$20,941.49 in TTD and lost time benefits and \$15,331.46 in medical payments. The total reimbursement was \$36,272.95. This reimbursement was sent to Attorney Stubbs, payable to Trimodal.⁵ However, the funds were then forwarded to Ward North, the entity that actually paid said sums.

As noted above, both Trimodal and Ward North agreed to forego reimbursement from claimant for the money paid to claimant or on claimant's behalf. However, no such promise came from the Fund, which was out a substantial sum, allegedly due to claimant's misrepresentations. A Fraud and Abuse claim was filed against claimant for the sums expended. During the Fraud and Abuse hearing, claimant testified that he had never seen the Agreed Award, never discussed the agreement with Attorney Schmid, never authorized Attorney Schmid to sign the Agreed Award on his behalf and never even met Attorney Roswold. The initial Fraud and Abuse determination found claimant liable for fines and penalties in the sum of \$46,000.00. An appeal to the Kansas Department of Labor (KDOL) followed, which resulted in the fines and penalties award being overturned. The Final Order, issued by the KDOL on August 7, 2006, found neither Attorney Schmid nor Attorney Roswold had the authority to bind claimant with the Agreed Award without claimant's knowledge and permission. Thus, the representations contained in the Agreed Award were held to be not binding on claimant.

On April 6, 2007, claimant, through his new attorney, filed and served a Motion for Review and Modification of the Agreed Award. A February 6, 2008 Review & Modification Order issued by the ALJ determined that the Agreed Award was made without claimant's authority, knowledge or consent and a consideration of a review and modification of the Agreed Award was, thus, proper. The ALJ, in his Review & Modification Award of April 14, 2008, denied claimant any modification of the Agreed Award. The ALJ determined that claimant had never been an employee of Trimodal and, therefore, could not be awarded benefits from Trimodal. Claimant's request for post-award medical treatment and payment of unauthorized medical expenses was also denied. The ALJ did award attorney fees to claimant's attorney in the amount of \$2,962.50 representing 19.75 hours at \$150.00 per hour, with Trimodal and its insurance company being ordered to pay the fees. No hearing or testimony on the issue of attorney fees was found in this record.

⁵ If, as represented, the check from the Fund was made payable to Trimodal, this suggests that Trimodal may have been aware of this workers compensation proceeding and was somehow a party.

The April 14, 2008 Review & Modification Award was appealed to the Board. The Board, in its Order of September 22, 2008, determined that claimant was an employee of Walia Trucking, and had consistently testified to that fact from the beginning of this litigation. The matter was then remanded to the ALJ for a determination of the liability of Walia Trucking, and Fire and Casualty, and Ward North. The ALJ determined that, as no E-1, Application for Hearing, had ever been filed against Walia Trucking, no liability could be assessed against Walia Trucking, its insurance carrier, Fire and Casualty, or the administrator, Ward North.

Many aspects of this case disturb the Board. When claimant was originally injured, Ward North paid thousands of dollars for disability benefits and for medical expenses. It is not entirely clear on whose behalf Ward North was making those payments as a third party administrator. However, it appears from this record that Fire and Casualty was the insurance carrier for Walia Trucking. Walia Trucking is not a corporation. It is a claimant "doing business as". Thus, notice of the accident to, and actual knowledge of the accident by, claimant would be notice to the insurance carrier, Fire and Casualty, and to its third party administrator, Ward North.⁶

When an E-1 was finally filed with the Division, it was not filed by claimant or any legal representative of claimant. It was, instead, filed by Attorney Stubbs, the representative of Fire and Casualty and Ward North. The E-1 listed the claimant, but showed Trimodal as the respondent. Attorney Stubbs signed the E-1 as the attorney for Trimodal, but Trimodal now contends, and Attorney Stubbs agrees, that Attorney Stubbs is not and has never been the attorney for Trimodal. Attorney Stubbs listed the insurance company as Ward North. However, Ward North is a third party administrator for Fire and Casualty.

Claimant's original attorney took no action to correct this misidentification of the employer or the failure to list the proper insurance company. However, claimant has consistently testified to the fact that he was self-employed, doing business as Walia Trucking. This fact was well known to Attorney Stubbs, as claimant testified to this employer-employee relationship at his discovery deposition on May 24, 2002, a deposition attended by Attorney Stubbs. Nevertheless, this misrepresentation of his representation of and the identity of the respondent continued with the Agreed Award, signed by Attorney Stubbs and filed with the Division on January 17, 2003. Trimodal continued to be listed as the respondent, with Ward North as the insurance carrier. However, the Dismissal of Claim adds APTDA as an employer along with Trimodal. It was through APTDA that claimant obtained workers compensation insurance from Fire and Casualty and its administrator, Ward North. Both Fire and Casualty and Ward North are clients of Attorney Stubbs. And, in truth, as Attorney Stubbs represented Walia Trucking's insurance carrier and administrator, he also then represented Walia Trucking. Attorney

⁶ *Lott-Edwards v. Americold Corp.*, 27 Kan. App. 2d 689, 6 P.3d 947 (2000).

Stubbs' reasons for filing an E-1 with Trimodal identified as the respondent are not explained in this record.

Claimant has argued aggressively that Attorney Stubbs and Trimodal should be estopped from denying the employer-employee relationship. However, the Board has ruled that Trimodal is not estopped from denying an employer-employee relationship between Trimodal and claimant, as they are not bound by the representations of Attorney Stubbs. No attorney actually representing Trimodal made any such representations.

However, Attorney Stubbs has presented himself as the attorney for claimant's employer and the insurance carrier of that employer in numerous legal documents filed with the Division. That representation was correct with regard to Ward North, the administrator of Fire and Casualty. That representation also apparently led claimant's original attorneys to believe the proper parties were involved in this litigation. Judicial and/or equitable estoppel may be applied to these parties if reliance on Attorney Stubbs' representations can be shown.

PRINCIPLES OF LAW AND ANALYSIS

The Kansas Workers Compensation Act permits a claimant to request review and modification and post-award medical benefits⁷ and authorizes an award of attorney fees in connection with such requests.⁸

K.S.A. 44-536(g)(h) states:

(g) In the event any attorney renders services to an employee or the employee's dependents, subsequent to the ultimate disposition of the initial and original claim, and in connection with an application for review and modification, a hearing for additional medical benefits, an application for penalties or otherwise, such attorney shall be entitled to reasonable attorney fees for such services, in addition to attorney fees received or which the attorney is entitled to receive by contract in connection with the original claim, and such attorney fees shall be awarded by the director on the basis of the reasonable and customary charges in the locality for such services and not on a contingent fee basis. If the services rendered under this subsection by an attorney result in an additional award of disability compensation, the attorney fees shall be paid from such amounts of disability compensation. If such services involve no additional award of disability compensation, but result in an additional award of medical compensation, penalties, or other benefits, the director shall fix the proper amount of such

⁷ K.S.A. 44-510k(a).

⁸ K.S.A. 44-510k(c) and K.S.A. 44-536(g).

attorney fees in accordance with this subsection and such fees shall be paid by the employer or the workers compensation fund, if the fund is liable for compensation pursuant to K.S.A. 44-567 and amendments thereto, to the extent of the liability of the fund. If the services rendered herein result in a denial of additional compensation, the director may authorize a fee to be paid by the respondent.

(h) Any and all disputes regarding attorney fees, whether such disputes relate to which of one or more attorneys represents the claimant or claimants or is entitled to the attorney fees, or a division of attorney fees where the claimant or claimants are or have been represented by more than one attorney, or any other disputes concerning attorney fees or contracts for attorney fees, shall be heard and determined by the administrative law judge, after reasonable notice to all interested parties and attorneys.

K.S.A. 44-536(g) allows fees to be ordered against an employer or the Fund. Here, the attorney fee against Trimodal and its insurance company is an order against an entity found to not have an employer-employee relationship with claimant. The Board, in its Order of September 22, 2008, found that claimant was a self-employed individual, doing business as Walia Trucking, and with insurance for workers compensation purposes arranged through APTDA, with Fire and Casualty as the insurance company and Ward North as the administrator. The Board determined that claimant's award of workers compensation benefits should be against Fire and Casualty and Ward North. Likewise, any award of attorney fees should be against Fire and Casualty and not against Trimodal and its insurance company, Pacific. The award of the ALJ granting attorney fees in favor of claimant and his attorney, in the amount of \$3,456.25 against Trimodal and its insurance company, Pacific, is reversed. Likewise, the award of costs in the amount of \$669.30 against Trimodal and its insurance company, Pacific, is reversed.

K.S.A. 44-528, the review and modification statute, allows for a modification of an award if,

. . . the administrative law judge finds that the award has been obtained by fraud or undue influence, that the award was made without authority or as a result of serious misconduct, that the award is excessive or inadequate or that the functional impairment or work disability of the employee has increased or diminished⁹

Claimant argues that the Agreed Award of January 21, 2003, can be modified to award claimant benefits against Walia Trucking and its insurance carrier, Fire and Casualty. The ALJ, in the Review & Modification Award on Remand dated November 5, 2008, found that the Agreed Award could not be modified to award benefits against Walia Trucking because there was no application for hearing on file with the Director for a claim by claimant against Walia Trucking. The ALJ reasoned that the "identity of the employer,

⁹ K.S.A. 44-528(a).

a real party in interest to workers compensation proceedings, is no mere procedural technicality. When the employer is not identified in the proceedings, the employer is not advised that its interests are at stake, and it is not granted a reasonable opportunity to be heard and present evidence, as required by K.S.A. 44-523.”¹⁰

The ALJ is correct that Walia Trucking was not identified as the employer on the E-1 filed with the Division. However, in this instance, Walia Trucking, its insurance company, Fire and Casualty, and the administrator, Ward North, are all represented by Attorney Stubbs. This is the same Attorney Stubbs who filed the E-1 Application for Hearing, incorrectly listing Trimodal as the employer and Ward North as the insurance company, while representing himself as attorney for Trimodal. The same Attorney Stubbs who took claimant’s discovery deposition on May 24, 2002, at which time claimant identified himself as being self employed. The same Attorney Stubbs who aided in the creation of the “Dismissal of Claim” on November 26, 2002, and presented the Agreed Award to claimant’s then attorneys on December 23, 2002. Attorney Stubbs then used the Agreed Award to obtain reimbursement in the amount of \$36,272.95 from the Fund payable to the benefit of Trimodal, which funds were then forwarded to Ward North, Attorney Stubbs’ client. No party to this litigation should argue that the real employer was not identified in this matter and not advised that its interests were at stake. This is disingenuous.

[T]he Workers Compensation Act provides an explicit procedure which allows an ALJ, on a motion for review and modification, to modify an award for fraud by increasing or diminishing the compensation. K.S.A. 44-528(a).¹¹

Common law equitable remedies, including estoppel, have been applied to the Workers Compensation Act.¹²

The doctrine of equitable estoppel is based upon the principle that a person is held to a representation made or a position assumed when otherwise inequitable consequences would result to another who, having the right to do so under all the circumstances, has in good faith relied thereon. [Citation omitted.]¹³

. . . Equitable estoppel is the effect of the voluntary conduct of a person whereby he is precluded, both at law and in equity, from asserting rights against another person relying on such conduct. A party asserting equitable estoppel must show that another party, by its acts, representations, admissions, or silence when

¹⁰ Review & Modification Award On Remand at 2.

¹¹ *Acosta v. National Beef Packing Co.*, 273 Kan. 385, 44 P.3d 330 (2002).

¹² *Marley v. M. Bruenger & Co., Inc.*, 27 Kan. App. 2d 501, 6 P.3d 421 (2000).

¹³ *PMA Group v. Trotter*, 281 Kan. 1344, 135 P.3d 1244 (2006).

it had a duty to speak, induced it to believe certain facts existed. It must also show it rightfully relied and acted upon such belief and would now be prejudiced if the other party were permitted to deny the existence of such facts¹⁴

Claimant initially alleged equitable estoppel against Trimodal, alleging the representations of Attorney Stubbs should bind Trimodal to the fact assertions in the Agreed Award. That request was denied by the Board in its Order of September 22, 2008, as Trimodal never authorized Attorney Stubbs to make such representations. The record showed that Attorney Stubbs was never the attorney for Trimodal. However, Attorney Stubbs is the attorney for Fire and Casualty and Ward North. Fire and Casualty and Ward North are not in a position to rely on the findings and holdings of the ALJ from the Review & Modification Award On Remand, wherein the ALJ determined that Walia Trucking was not identified as an employer on an E-1. The court held that it was prohibited, for that reason, from entertaining a review and modification award against Walia Trucking and its insurance company due to the lack of an application for hearing (E-1). The original E-1 listed Trimodal as the employer. Legal documents created by Attorney Stubbs and others listed Trimodal as the employer while omitting references to Walia Trucking and Fire and Casualty, its insurance carrier. These representations induced claimant to believe that Trimodal was the employer for purposes of this workers compensation claim. Therefore, claimant was led to believe no additional filings were needed to satisfy the filing requirements of the Workers Compensation Act. The act of filing an E-1 listing Walia Trucking was prevented by the actions of Attorney Stubbs, to the benefit of his clients and the detriment of claimant.

The facts cited in support of equitable estoppel cannot be ambiguous or subject to more than one construction.¹⁵ Here, Attorney Stubbs, Fire and Casualty and Ward North are estopped from denying workers compensation coverage for claimant for the accident on December 11, 2000.

Claimant's failure to file an E-1 also places his claim in jeopardy due to the failure to meet the timing deadlines contained in the Workers Compensation Act. The time limits for notice, timely written claim and application for hearing have all passed. Another legal theory determinative of these defenses rests with judicial estoppel. A party can only assert judicial estoppel when all four elements are satisfied: (1) a position taken must contradict a declaration in a prior judicial action; (2) the two actions must involve the same parties; (3) the party asserting the theory must have changed its position; and (4) the changed position must have been in reliance on the prior statement.¹⁶

¹⁴ *Id.* at 1352-53 (quoting *United American Bank & Trust Co., v. Wild West Chrysler Plymouth, Inc.*, 221 Kan. 523, 527, 561 P.2d 792 ([1977])).

¹⁵ *Rockers v. Kansas Turnpike Authority*, 268 Kan. 110, 991 P.2d 889 (1999).

¹⁶ *In re Marriage of Hudson*, 39 Kan. App. 2d 417, 182 P.3d 25 (2008).

Here, the E-1 filed listing Trimodal as the respondent is now being contradicted by evidence showing Walia Trucking as the real employer. Claimant was misled into not filing the appropriate documents to proceed with the litigation of this matter against the real party in interest, Walia Trucking and its insurance carrier Fire and Casualty. Claimant's reliance on the incorrect filings by Attorney Stubbs has placed him in a position wherein he has potentially lost his rights to workers compensation benefits. To allow Walia Trucking, its insurance company, Fire and Casualty, or its third party administrator, Ward North, to now object or raise these defenses to this litigation due to any failed time limits would be unconscionable. Attorney Stubbs and his clients are judicially estopped from denying that claimant has met the requirements of timely notice, written claim and timely application for hearing in this matter.

The matter is remanded to the ALJ for a determination as to claimant's disability and right to medical care and treatment, pursuant to a review and modification of the Agreed Award on January 21, 2003, and to assess these benefits against Walia Trucking and its insurance carrier.

A post-award grant of attorney fees is appropriate in this instance.¹⁷ However, as noted above, the Board has previously determined that no award may be assessed against Trimodal or its insurance carrier. Therefore, the post-award order granting attorney fees and costs must be determined against another person, party or legal entity herein. This matter is remanded to the ALJ for a determination of the amount of attorney fees and costs to be assessed against Attorney Stubbs, Fire and Casualty and/or Ward North.

K.S.A. 44-536a states:

(a) Every pleading, motion and other paper provided for by the workers compensation act of any party, who is represented by an attorney, shall be signed by at least one attorney of record in the attorney's individual name, and the attorney's address and telephone number shall be stated. A pleading, motion or other paper provided for by the workers compensation act of any party who is not represented by an attorney shall be signed by the party and shall state the party's address.

(b) Except when otherwise specifically provided by rule and regulation of the director, pleadings need not be verified or accompanied by an affidavit. The signature of a person constitutes a certificate by the person (1) that the person has read the pleading, (2) that to the best of the person's knowledge, information and belief formed after reasonable inquiry, the pleading is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (3) that the pleading is not imposed for any

¹⁷ K.S.A. 44-536(g).

improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of resolving disputed claims for benefits.

(c) If any pleading, motion or other paper provided for by the workers compensation act is not signed, such pleading, motion or other paper shall not be accepted and shall be void unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(d) If a pleading, motion or other paper provided for by the workers compensation act is signed in violation of this section, the administrative law judge, director or board, upon motion or upon its own initiative upon notice and after opportunity to be heard, shall impose upon the person who signed such pleading or a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including reasonable attorney fees.

This matter is also remanded to the ALJ for a hearing pursuant to K.S.A. 44-536a and a determination of what, if any, sanctions may be appropriate for the actions of Attorney Stubbs and his clients. As the Fund provided the original reimbursement based on the Agreed Award, a copy of this Order is also being provided to the Fund.

CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be reversed with respect to the award of attorney fees and costs against Trimodal and its insurance carrier, Pacific. It is remanded to the ALJ for a determination as to the nature and extent of claimant's disability, claimant's entitlement to ongoing and future medical treatment, and to so modify the January 21, 2003, Agreed Award, for a determination as to claimant's right to attorney fees and costs, post award, against Walia Trucking and its insurance carrier Fire and Casualty, and for a determination as to any sanctions deemed appropriate, all pursuant to the above findings.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Review & Modification Award On Remand of Administrative Law Judge Kenneth J. Hursh dated November 5, 2008, should be, and is hereby, reversed in part, and remanded to the ALJ for further hearings and determinations consistent with the above findings.

IT IS SO ORDERED.

Dated this ____ day of May, 2009.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Frank D. Taff, Attorney for Claimant
Clifford K. Stubbs, Attorney for Respondent, Rajwinder Singh Walia Trucking, and
its Insurance Carrier, Fire and Casualty Insurance Company of Connecticut,
and its administrator, Ward North America and APTDA.
Wade A. Dorothy, Attorney for Respondent Trimodal, Inc., and its Insurance
Carrier Pacific Employers Insurance Company
Kansas Workers Compensation Fund, Insurance Department, 420 SW 9th,
Topeka, Kansas 66612
Kenneth J. Hursh, Administrative Law Judge